U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: Nebraska Service Center Date: JAN 11 2002

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(2)

PUBLIC COPY

IN BEHALF OF PETITIONER: [redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(2), as a member of the professions holding an advanced degree. At the time of filing, the petitioner was a doctoral student at Washington State University ("WSU").[1] The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer. -- The Attorney General may, when he deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor Service regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the

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[1]The petitioner received his doctoral degree in December 1998.

committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to Service regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In a statement submitted with the initial filing of the petition, counsel describes the petitioner's work:

> [The petitioner] has over ten years of research experience in plant breeding and genetics, and is currently conducting research on calcium signal transduction in plants and the role of calcium in plant growth and development. . . . [The petitioner] pioneered the use of anther culture techniques to develop an elite rice variety. In the United States, [the petitioner] has made two more breakthroughs in his field: 1) he independently discovered the genes TCK1 and PMDR1, providing the world's first evidence that they may be regulated by calmodulin in plants; and 2) he isolated genes whose proteins may interact with calcium revealing mechanisms by which plant growth and development occur.
>
> [The petitioner's] research is of national importance. According to leading experts, his scientific efforts toward designing genetically superior crop plants are essential for improving the growth, yield, quality, and pest-resistance of crop plants without the excessive use of heavy-duty agricultural chemicals.

Counsel states that the petitioner's published papers have been "widely relied upon by others working in his field," and "represent a crucial and indispensable stride in the field." The assertion that other researchers have "widely relied upon" the petitioner's work is readily proven through evidence of heavy citation by independent researchers. Without such evidence, it is not immediately clear how anyone could attest, first-hand, to the petitioner's purported influence throughout the field. We

therefore must examine the record for evidence to support counsel's claim. Counsel cites no specific supporting evidence.

Accompanying the initial filing are, in counsel's words, "third-party documents demonstrating the importance of [the petitioner's] research." These documents offer general background information regarding genetically engineered crop plants, but none of them mention the petitioner or even cite his published work. Most of the articles were published before the petitioner had published anything in the field, and thus they cannot show his influence. Thus, the articles establish the intrinsic merit and national scope of the petitioner's occupation but they do not distinguish the petitioner from other researchers in the specialty, nor do they offer any support for the claim that other researchers have widely relied upon the petitioner's work in the field.

Along with the above background documentation, the petitioner submits several letters. Professor B.W. Poovaiah, who has supervised the petitioner's doctoral research at WSU, states:

> Over the last four years, [the petitioner] has played a critical role in our research on calcium signal transduction and the overall role calcium plays in plant growth and development. . . .
>
> Our best hope for feeding [the world's] ever-increasing population is through increasing food production from our diminishing land base. My research group is therefore working to identify the calcium signaling mechanism that will allow us to manipulate crop plants genetically to improve their growth, yield, and nutritional value. In addition, there are many intracellular similarities in calcium signal transduction between plants and animals. . . . Thus, [the petitioner's] research contributions in this field also have applicability to human health and medical research.

Prof. Poovaiah states that the petitioner's discovery of the TCK1 gene "is very significant because it is the world's first documentation that this kind of calmodulin-regulated protein exists in living tissue," and that the petitioner's discovery of the PMDR1 gene "is nationally significant not only scientifically (because it provides the first evidence that this protein may be regulated by calmodulin in plants) but also medically (because of its suspected function as a 'pump' in both normal and cancer cells)." Prof. Poovaiah describes the petitioner's other "major contribution," specifically the petitioner's efforts "to isolate several candidate genes whose encoded proteins may interact with calcium/calmodulin-dependent protein kinase (CCaMK)," which in turn "is believed to play an important role in calcium signal transduction and involves both microsporogenesis and microspore maturation."

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Dr. Ziyu Dai, research scientist at Pacific Northwest National Laboratory, states:

> I am very familiar with [the petitioner's] research on calcium signal transduction pathways in plants because (like a lot of scientists in this field) I have followed the leading edge research of Dr. Poovaiah's laboratory closely for a number of years. . . . [The petitioner's] work . . . is . . . providing crucial information about the mechanisms through which plants or animals detect different growth and development-related signals.
>
> I feel strongly that [the petitioner] has made important contributions to our knowledge of the underlying mechanisms of gene regulation and cell development. This is especially true of his breakthrough discovery of the TCK1 and PMDR1 genes.

Other witnesses echo the assertion that the petitioner's findings are significant within the field, and that the petitioner is uniquely qualified to pursue his specific line of research. While the witnesses are now with a variety of research institutions, all of them are either WSU faculty members, are working in Washington near WSU, or have collaborated with the petitioner in the past (as shown by their co-author credits in the petitioner's published articles).

The director requested further evidence that the petitioner has met the guidelines published in Matter of New York State Dept. of Transportation. In response, the petitioner has submitted additional letters, including letters from both members of Washington's delegation to the U.S. Senate. Senator Slade Gorton states that the petitioner "has been recognized . . . nationally for his scientific research," and that the petitioner "has been making important contributions to the nation's efforts to improve its food supply and economic outlook." Senator Patty Murray states more generally that the petitioner is an experienced researcher at a well-regarded university, and thus "an asset to Washington State and the entire United States."

WSU Professor Rodney Croteau, member of the prestigious National Academy of Sciences, reviews the petitioner's various accomplishments and asserts that the petitioner's "expertise in and contributions to America's agricultural research efforts in the area of calcium-mediated signaling in plants substantially exceed what is normally expected in this field."

Gregory M. Glenn, lead scientist at the Cereal Products Utilization Research Unit of the Western Regional Research Center of the U.S. Agricultural Research Service (and a published collaborator with Prof. Poovaiah), states:

[redacted]

> Before stress tolerant crop varieties can be engineered, it is necessary to have a fundamental understanding of how plants sense environmental stress, respond and adapt to it. The research that [the petitioner] has been performing is helping provide this fundamental knowledge. . . .
>
> He has succeeded in developing new crop varieties using a novel technique that reduced the variety development time to half the time required when conventional breeding techniques are used. These accomplishments were nationally and internationally recognized.

The director denied the petition, acknowledging the intrinsic merit and national scope of the petitioner's work, but finding that the petitioner has not shown that he "will potentially have a significant impact . . . that will be so substantial as to be in the national interest." The director concluded that the petitioner's track record does not "show the attainment of a level above that of other qualified research scientists."

Counsel, on appeal, lists the various witnesses of record and asserts that, if the petitioner does not qualify for the waiver, "these U.S. Senators and these leading experts in the field are all pathologic liars." The director did not dispute the honesty or sincerity of the various witnesses. At issue is whether the petitioner's work is viewed as significant outside of the petitioner's and Prof. Poovaiah's circle of collaborators. Because almost all of the witnesses number among those collaborators, the letters do not resolve this issue.[2] Even then, the witnesses do not show the extent to which the petitioner's work has already influenced horticulture, agriculture, or plant biology at a practical level; they simply suggest that the petitioner has opened an avenue for further investigation, and that the petitioner's work is well-regarded by his and Prof. Poovaiah's collaborators.

The petitioner, on appeal, submits copies of reprint requests from researchers on four continents, establishing demand for copies of published articles. We note that almost all of these requests are

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[2]With regard to the witness letters, we note that many of the witnesses have stated that the project in Prof. Poovaiah's laboratory at WSU cannot continue, or will be seriously delayed, by the petitioner's departure. Therefore, the witnesses argue, it would serve the national interest to allow the petitioner to remain at WSU in order to continue contributing to Prof. Poovaiah's study of calcium channels. Because the waiver claim rests heavily on the assertion that the petitioner should remain at Prof. Poovaiah's laboratory at WSU, it is significant that the petitioner has left WSU to conduct research on ethylene signal transduction and cell separation at the University of Wisconsin.

addressed to Prof. Poovaiah, who (the record shows) has an established reputation in his field. We also note that reprint requests establish an interest in reading the articles, but do not show that the requestors subsequently (after actually reading the articles) found the articles to be especially important to the field. While some of the requests date from several years prior to the petition's filing, there is no evidence in the record that any of the requests resulted in citations in later published articles.

The petitioner submits a copy of a letter from the editor of Plant Science, inviting the petitioner to evaluate a manuscript submitted for publication in that journal. Counsel states that this letter shows that the petitioner is regarded as fit to judge the work of others in the field. The record does not establish the means by which the publishers of Plant Science select peer reviewers, and therefore we cannot conclude that the invitation is a mark of distinction. Furthermore, the request, dated September 15, 1999, falls well after the petition's August 3, 1998 filing date and cannot retroactively establish eligibility. See Matter of Katigbak, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, U.S.C. 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.